

PUBLIC SERVICE COMMISSION

OF WEST VIRGINIA

CHARLESTON

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TYLER MORGAN, LLC

* 18-1080-COAL-SC-GI

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HEARING TRANSCRIPT

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BEFORE: MICHAEL A. ALBERT, Chairman

BROOKS F. MCCABE, Commissioner

HEARING: Thursday, October 18, 2018

1:00 p.m.

LOCATION: PSC Howard M. Cunningham Hearing Room

201 Brooks Street

Charleston WV

Reporter: Cynthia Piro Simpson

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A P P E A R A N C E S

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ALSO PRESENT:

Greg Birurakis

Kathy Payne

Andrew Jordan

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P R O C E E D I N G S

CHAIRMAN ALBERT:

Good afternoon. I'm Mike Albert, Chairman of the Public Service Commission. With me on my right is Commissioner Brooks McCabe. We're here to conduct a hearing in PSC Case Number --- hold on just a minute, PSC Case Number 18-1080-COAL-SC-GI.

It's a proceeding that requires a coal shipper to show cause why the Commission should not enforce outstanding Notices of Violation in Circuit Court and assess costs and investigation of delinquent tonnage fees, and whether administrative penalties or costs should be imposed.

This proceeding is before us under Chapter 17C, Article 7A of the West Virginia Code, which is the CRTS statute that sets a --- or establishes a network of roads in West Virginia that receivers of coal, vehicle operators shipping the coal and vehicle owners are entitled to use for the transportation of heavy loads of coal.

The West Virginia Legislature delegated the oversight of the CRTS system to the Public Service Commission. And we have a statute and rules and regulations that deal with the use of that system.

1 Now, the Commission imposed a 57 ---
2 I'm going to round these numbers, \$5,700 of
3 administrative penalties on Tyler Morgan for loading
4 commercial motor-vehicles with coal in an amount that
5 exceeded the gross vehicle weight of the commercial motor
6 vehicles. And it caused them to exceed the lawful weight
7 limit on those roads. Tyler Morgan did not pay those
8 particular administrative penalties.

9 The Commission also collects permit
10 fees and tonnage fees for operations of the CRTS and
11 deposits those amounts in the Coal Resource
12 Transportation Fund, which the West Virginia Department
13 of Highways uses to construct, maintain and repair public
14 roads, bridges over which these coal shipments are made.

15 A shipper that loads the permitted
16 amount of coal that exceeds 88,000 pounds must remit to
17 the Commission by the tenth day of each month a payment
18 of five cents per ton applied to that total tonnage of
19 the amounts involved in each shipment during the prior
20 month. Tyler Morgan has not remitted those tonnage fees
21 as required.

22 On July 20th, the Commission opened
23 this proceeding and require Tyler Morgan to show cause
24 why the Commission should not enforce, in Circuit Court,
25 the administrative penalties imposed by the Final Order

1 and assess the costs to Tyler Morgan.

2 In the July 20th Order setting the
3 matter, the Commission also opened an investigation in
4 the amount of tonnage fees owed by Tyler Morgan for its
5 operation from March 1 of 2018 to June 30th of 2018 and
6 administrative penalties, costs and fees, if any, that
7 should be imposed.

8 To date, Tyler Morgan had not filed a
9 response to the Commission Order that opened the show
10 cause and general investigation proceeding.

11 Based on electronic reports filed with
12 the Commission and information provided by Staff in
13 discovery, Staff estimates approximately \$1,770 as the
14 tonnage fees. Tyler Morgan and Staff have filed a
15 proposed settlement under which Tyler Morgan agrees to
16 pay the NOV, the administration sanctions and delinquent
17 tonnage fees in full at today's hearing.

18 Today's hearing is an opportunity for
19 Tyler Morgan and Staff both to present evidence,
20 including the proposed Settlement Agreement. Under our
21 rules we typically do not take a settlement without
22 supporting evidence to show that it is basically a fair
23 and reasonable arrangement.

24 And we almost invariably find that they
25 are, I might add, particularly when the parties negotiate

1 them because they each have their own interest at heart.

2 The Commission may enter a final order
3 based upon the evidence or lack of adequate evidence on
4 some or all the matters at issue in this case. The final
5 order could be adverse to Tyler Morgan. The Commission
6 may also decide to continue its investigation into some
7 of the matters at issue.

8 Let's go ahead and start by taking
9 appearances of counsel. Staff?

10 ATTORNEY BOUVETTE:

11 Linda Bouvette, Staff Attorney. And I
12 have with me Mr. Greg Birurakis and Kathy Payne from the
13 Transportation Commission.

14 CHAIRMAN ALBERT:

15 Tyler Morgan?

16 ATTORNEY SMITH:

17 Nicola Smith from Hoyer, Hoyer & Smith.
18 And to my right is Andrew Jordan, a member of Tyler
19 Morgan.

20 CHAIRMAN ALBERT:

21 Thank you. We have been putting poor
22 Mr. Birurakis up on the witness stand and having him
23 swear to all his duties in these cases. We got to the
24 point where we had him prepare his testimony as an
25 exhibit, so that we don't have to --- not that he's not

1 entertaining, but that we don't have to sit and listen to
2 him go through it all again.

3 We also have a --- as we do in any rate
4 proceeding, we also put into testimony the support for
5 our --- the Staff's --- the Commission's claim in the
6 proceeding, and also anything that might reflect on the
7 reasonableness of the settlement proposal being presented
8 to the Commission.

9 I think that that's helpful to us. It
10 certainly makes it easy to support the stipulation. And
11 I think at this time what we'll do is go ahead and allow
12 Staff to present that testimony as, quite frankly, in an
13 abbreviated fashion as possible.

14 ATTORNEY BOUVETTE:

15 Do you want me to just review the
16 documents, ---

17 CHAIRMAN ALBERT:

18 Yes.

19 ATTORNEY BOUVETTE:

20 --- rather than having Mr. Birurakis
21 take the stand?

22 CHAIRMAN ALBERT:

23 Yeah.

24 ATTORNEY BOUVETTE:

25 The first exhibit that we have at tab

1 one is the Direct Testimony of Greg Birurakis, who
2 summarizes his background and also his CRTS Program. We
3 ask that be identified as Staff Exhibit 1.

4 CHAIRMAN ALBERT:

5 All right. It will be so marked.

6 (Staff Exhibit 1 marked for
7 identification.)

8 ATTORNEY BOUVETTE:

9 The second exhibit is the internal
10 memorandum, dated October 3rd, 2008 (sic) from Greg
11 Birurakis to Linda Bouvette, Staff Attorney. And in the
12 internal memorandum Mr. Birurakis notes that no response
13 was filed by Tyler Morgan to the Commission's July 20th,
14 2018 Order, noting that Tyler Morgan did respond to the
15 first set of data request from Staff.

16 He then noted that there were seven ---
17 ten Notices of Violation that remained unpaid and that
18 were noted in the Show Cause Order, and then one
19 additional Notice of Violation. The total Notices of
20 Violation administration sanctions is \$5,704.60.

21 He then indicated that, based on the
22 information submitted in Tyler Morgan's response to data
23 request, that they then pay tonnage fees calculated to be
24 \$1,772.95 for the period March 2018 and June 30th of
25 2018.

1 He supported his memorandum with an
2 Exhibit A, documenting the unpaid Notices of Violation,
3 and also Exhibit B, which is a calculation of the unpaid
4 CRTS tonnage fees.

5 CHAIRMAN ALBERT:

6 Well, those referenced exhibits will be
7 marked for identification and admitted into the record.

8 (Staff Exhibit 2 was marked for
9 identification.)

10 ATTORNEY BOUVETTE:

11 As Exhibit 3 we have the list of
12 Notices of Violation. The first one is dated September
13 14 of 2016. It's for overweight, and the fine was
14 \$1,009.

15 The second, 9/28/2016, for overweight,
16 \$494; October 12th of 2016, \$378 for overweight;
17 March 27th, 2017, the fine was \$246.60 for overweight;
18 April 11th, 2017, the administrative sanction was \$1,478;
19 April 25th of 2017, fine of \$360.20; August 4th of 2017,
20 a fine of \$869.80 for overweight; November 22nd, 2017,
21 \$300.80 for overweight; April 3rd of 2018, \$242.40 for an
22 overweight. And then the last was June 22nd, 2018, for
23 \$325.80 for overweight, totaling \$5,704.60.

24 CHAIRMAN ALBERT:

25 All right. That will be admitted as

1 well.

2 (Staff Exhibit 3 was marked for
3 identification.)

4 ATTORNEY BOUVETTE:

5 Following the Notices of Violation, an
6 expiration of 20 days from the date of service, the
7 Respondent did not request a hearing. So the Staff made
8 a final recommendation to the Commission for a Final
9 Order. And those --- Staff final recommendations are
10 found at Exhibit 4.

11 CHAIRMAN ALBERT:

12 All right.

13 (Staff Exhibit 4 marked for
14 identification.)

15 ATTORNEY BOUVETTE:

16 And they correspond with the case
17 numbers assigned to the Notices of Violation.

18 And finally, at Exhibit 5 we have the
19 individual Final Orders imposing violations and
20 administrative sanctions for each one of the Notices of
21 Violation.

22 CHAIRMAN ALBERT:

23 All right.

24 (Staff Exhibit 5 marked for
25 identification.)

1 CHAIRMAN ALBERT:

2 The matters referenced in your
3 discussion and marked for identification as Exhibits 1
4 through 5 will be admitted into the record.

5 The Commission is aware that the
6 parties have negotiated and executed a Joint Stipulation
7 and Settlement Agreement. We're always pleased by that.
8 And we thank you for that effort.

9 And do you want to describe that or how
10 --- do you want to --- I'm perfectly prepared just to
11 accept a description of it since we've got it in writing.
12 And if you want to go through it briefly, that would
13 work.

14 ATTORNEY BOUVETTE:

15 I can do it very briefly. We have a
16 Joint Stipulation and Settlement Agreement. We'd like
17 that identified as Joint Exhibit 1. And it requires
18 Tyler Morgan to pay the administrative sanctions and the
19 delinquent CRTS tonnage fees on today's date at the
20 evidentiary hearing.

21 We expect to have a check tendered
22 today, payment in full. And they agreed to stay current
23 on all tonnage fees and CRTS administrative sanctions
24 going forward. And the parties urge the Commission to
25 approve the agreement as it is.

1 CHAIRMAN ALBERT:

2 All right.

3 (Joint Exhibit 1 was marked for
4 identification.)

5 CHAIRMAN ALBERT:

6 Well, rather than having a lengthy
7 discussion about the Order --- I mean, the stipulation,
8 if the checks have been paid, what we'll likely do is
9 simply say that the matter is dismissed under
10 satisfaction for the debt and not have to make an
11 assessment of the ruling and all the background. Is that
12 acceptable?

13 ATTORNEY BOUVETTE:

14 As long as she's got her check with
15 her, that's satisfactory to the Staff.

16 CHAIRMAN ALBERT:

17 Kind of a tacky way to put it, but I
18 understand.

19 ATTORNEY SMITH:

20 We can show you the money.

21 CHAIRMAN ALBERT:

22 Ms. Smith, do you have any comments you
23 want to make about the stipulation or anything that's
24 been submitted into the record? It's there in case we
25 get asked about it. That's all. As I say, this likely

1 will simply be dismissed for satisfaction.

2 ATTORNEY SMITH:

3 We have no objection or comments.

4 Thank you.

5 CHAIRMAN ALBERT:

6 Okay. Short and sweet. Anything else?

7 ATTORNEY BOUVETTE:

8 No, Your Honor.

9 CHAIRMAN ALBERT:

10 All right. We'll adjourn this hearing
11 and consider the matter submitted. Thank you.

12 * * * * *

13 HEARING CONCLUDED AT 1:15 P.M.

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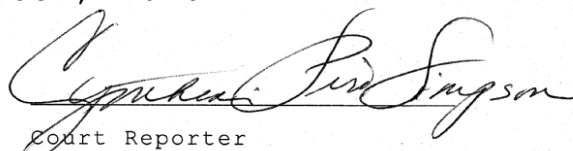
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CERTIFICATE

I hereby certify, as the stenographic reporter, that the foregoing proceedings were taken stenographically by me, and thereafter reduced to typewriting by me or under my direction; and that this transcript is a true and accurate record to the best of my ability.

Dated the 31st day of October, 2018

A handwritten signature in cursive script, reading "Cynthia Piro Simpson".

Court Reporter

Cynthia Piro Simpson